

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES DARRELL GANDY,

Defendant-Appellant.

UNPUBLISHED

July 29, 2010

No. 292160

Wayne Circuit Court

LC No. 08-018431

Before: SHAPIRO, P.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

A jury convicted defendant of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to consecutive prison terms of 1-1/2 to 5 years for the felon in possession conviction and two years for the felony-firearm conviction. For the reasons set forth below, we affirm.¹

Defendant's multiple convictions for felon in possession of a firearm and felony-firearm do not violate his double jeopardy protections. "Because the felon in possession charge is not one of the felony exceptions in the [felony-firearm] statute, it is clear that defendant could constitutionally be given cumulative punishments when charged and convicted of both felon in possession, MCL 750.224f, and felony-firearm, MCL 750.227b." *People v Calloway*, 469 Mich 448, 452; 671 NW2d 733 (2003).

We also reject defendant's claim that trial counsel was ineffective. Because defendant did not raise this issue in a motion for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), our review is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). Defendant argues that defense counsel was ineffective for not calling Gwen Gaines as a witness at trial or any of the other occupants of the car where the gun was found. Defendant asserts that these witnesses could have testified regarding "[d]efendant's actions at the time the group was stopped" and that Gaines "could have testified that she also was charged with carrying a concealed weapon." However,

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

defendant has not submitted any affidavits or other offer of proof showing what testimony these witnesses would have provided, and the record does not establish that Gaines or any other witness would have testified favorably to the defense. Accordingly, there is no basis for us to conclude that defense counsel's failure to call these witnesses fell below an objective standard of reasonableness, or that there is a reasonable probability that the result of the trial would have been different had the witnesses been called. *People v Pickens*, 446 Mich 298, 327; 521 NW2d 797 (1994); *People v Seals*, 285 Mich App 1, 17; 766 NW2d 314 (2009). Therefore, defendant is not entitled to relief.

Affirmed.

/s/ Henry William Saad

/s/ Deborah A. Servitto